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EXAMINER

KYLE, CHARLES R

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 08/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/399,753

Applicant(s)

MILLER ET AL.

Examiner

Charles R Kyle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 14-15, 18-19 and 25-26** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ludwig et al*

**With respect to Claim 14**, *Ludwig* discloses the invention substantially as claimed, including in a method of creating a user-defined network environment without requiring administrator privileges (Fig. 1; Col. 5, line 65 to Col. 6, line 64), the steps of:

1) creating a group by specifying a plurality of group members entitled to use the user-defined network environment (Figs. 2A and 8B; Col. 24, lines 16 to Col. 26, line 26);

2) selecting a plurality of web-accessible (Fig. 2B, “Posle Browser” element) tools from a list of available tools, wherein the selected web-accessible tools are to be made available over an IP network (Col. 8, lines 16-26) to the plurality of group members specified in step 1 (Figs. 20, 30; Summary of the Invention; Col. 18, lines 39-45);

3) through the use of computer software (Summary of the Invention) automatically creating the user-defined networked environment by creating a web page (Fig. 2B, “Posle Browser” element) accessible to the plurality of group members selected in step 1, and providing

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access via the web page to the plurality of web-accessible tools selected in step 2 (Col. 19, line 49 to Col. 20, line 4; Fig.. 8A).

*Ludwig* does not specifically disclose a group identifier and description. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided such information to users because this would have allowed a user to locate and confirm identity of groups in which he or she might wish to participate.

**With respect to Claim 15**, *Ludwig* discloses inviting prospective group members at Col. 22, lines 26-38.

**Concerning Claim 18**, *Ludwig* discloses electronic collaboration among group members Abstract.

**With respect to Claim 19**, *Ludwig* discloses destroying the environment at Col. 23, lines 31-50.

**With respect to Claim 25**, *Ludwig* discloses brainstorming in the environment at Col. 1, lines 39-45.

**With respect to Claim 26**, it is the system form of Claim 14 and recites the same functionality. *Ludwig* further discloses a plurality of computers networked (Fig. 1), a plurality of web browsers (Fig. 2B), and a database that stores information concerning the user-defined network environment (Col. 8, lines 27-40). *Ludwig* also discloses that the computers are networked through the Internet, an IP-based entity. at Col. 8. Lines 16-26.

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**Claims 16-17, 27-31 and 33-38** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ludwig et al* in view of *Walker et al*.

**With respect to Claim 16**, *Walker* discloses advertisement for prospective participants at Col. 2, lines 1-19.

**With respect to Claim 17**, it would have been obvious to screen for participants because this would have limited the environment to suitable persons. An example of such screening is performing a credit check of potential purchasers.

**With respect to Claim 27**, *Ludwig* discloses the invention substantially as claimed. See the discussion of Claim 14 above. *Ludwig* does not specifically disclose steps 4- 8 as set forth in Claim 27. *Walker* discloses these steps as posting offers to form a contract (Fig. 5A), posting responses (Fig. 5C; Col. 4, line 62 to Col. 5, line 7), researching responses (Col. 9., line 38 to Vol. 10, line 26), negotiating to accept a response (Fig. 5E; Abstract) and electronically signing the contract (Col. 12, lines 34-46). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected the negotiation method steps disclosed by *Walker* in the method of *Ludwig* because this would have facilitated the haggling type negotiation disclosed by *Walker*.

**Concerning Claim 28**, *Walker* suggests a user-selected sort order at Figs. 5a-5e. Providing such a capability would allow users to more effectively search for items they wanted. This is as opposed to endless scrolling through unordered items.

**Concerning Claims 29-31**, see the discussion of Claim 27 above and anonymous negotiation was well known at the time of the invention and allowed negotiators to transact business without allowing the opposing negotiator the advantage of knowing his/her personal

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characteristics and weaknesses. Simultaneous revelation of identity would allow both parties to obtain this benefit.

**With respect to Claims 33 and 34**, see the discussion of Claim 16 and the use of hyperlinks was old and well known at the time of the invention.

**With respect to Claim 35**, *Ludwig* discloses these steps which constitute negotiation at Col. 1, lines 25-50.

**With respect to Claim 36**, see the discussions of Claims 27 and 17 above.

**With respect to Claim 37**, *Walker* discloses use of the Internet at Col. 7, line 47 to Col. 8, line 57.

**Concerning Claim 38**, *Ludwig* discloses collaboration, communication and transaction tools at the Background of the Invention.

**Claims 20-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ludwig et al* in view of *Ferguson*.

**With respect to Claim 20**, *Ludwig* discloses the invention substantially as claimed. See the discussion of Claim 14 above. *Ludwig* does not specifically disclose using its invention for an auction. *Ferguson* discloses use of networked collaboration for auctions at Col. 8, lines 55-63. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have implemented the auction of *Ferguson* in the networked environment of *Ludwig* because this would have allowed for the interpersonal communications described by *Ludwig* which would have made the auction of *Ferguson* more exciting. Additionally, *Ludwig* discloses

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using their invention for business negotiations, of which auctions are a type. See Background of the Invention.

**With respect to Claim 21**, a survey would have been obvious for the same interpersonal communication benefit cited directly above. Such interpersonal communication would allow a person doing a survey to obtain much more “feedback” than as with simple forms filling.

**With respect to Claim 22**, *Ferguson* discloses bid and proposal format at Col. 8, lines 55-61.

**With respect to Claim 23**, an auction is read as ordering goods and services. See the discussion of Claim 20 above.

**Claim 24** is rejected under 35 U.S.C. 103(a) as being unpatentable over *Ludwig et al* in view of *Microsoft Press Computer Dictionary, Third Edition*.

**With respect to Claim 24**, *Ludwig* discloses the invention substantially as claimed. See the discussion of Claim 14 above. *Ludwig* does not specifically disclose use of EDI to execute business transactions. *Dictionary* discloses the use of EDI for business transactions at page 169. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used EDI for executing commercial transactions because it provides standardized business documents, which would have facilitated the completion of transactions.

**Claim 32** is rejected under 35 U.S.C. 103(a) as being unpatentable over *Ludwig et al* and *Walker* and further in view of *Axaopoulus et al*.

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*Ludwig* and *Walker* disclose the invention substantially as claimed. See the discussion of Claim 27 above. They do not disclose the use of a keyword search agent. *Axaopoulus* discloses this feature at Col. 15, lines 36-40 at least. The combination would have been obvious because this would have simplified search efforts by users of the electronic commerce environment of *Axaopoulus*.

**Claims 39 and 41** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ludwig et* in view of *Tannenbaum*.

**With respect to Claim 39**, see the discussion of Claim 14 above and *Ludwig* discloses a single network at Fig. 1. This single network is composed of MLANs and a WAN as noted by Applicant. *Ludwig* does not clearly define its network as a single network, although it is clearly shows an interconnected collection of autonomous computers. *Tannenbaum* makes clear this definition at Page 2, third full paragraph and shows that *Ludwig* discloses a single network. Thus, *Ludwig* discloses the single network claimed by Applicant.

Applicant attempts to set up an arbitrary boundary between the MLANs and WANS to argue that they do not make up a single network. As made clear by *Tannenbaum*, the connected autonomous computers linked by *Ludwig* are a single network.

**As to Claim 41**, see the discussion of Claims 14 and 39 above. The newly added feature of IP network web accessible tools is addressed above.



**Claims 40 and 42** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ludwig et al* and *Tannenbaum* and further in view of the *Dictionary of Computer and Internet Terms*, hereinafter, *Dictionary*.

**With respect to Claim 40**, see the discussion of Claim 39 above. *Ludwig et al* and *Tannenbaum* do not make clear the definition of the Internet. *Dictionary* makes clear that the Internet is a single network of linked computer networks akin to that of *Ludwig* at pages 239-240. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the single network of the Internet disclosed by *Dictionary* for the invention of *Ludwig et al* and *Tannenbaum* because this would have given the global reach disclosed by *Dictionary* in the first line of the Internet definition.

#### ***Response to Arguments***

Applicants' arguments filed June 6, 2003 have been fully considered but they are not persuasive.

At page 8 of the Amendment, second paragraph, Applicants begin argument with the statement that access of tools over an IP network is a newly claimed feature. This feature is disclosed by *Ludwig* as set forth above in the discussion of Claim 14 and other similarly amended claims.

At page 8, paragraphs 3-4, Applicants argue against the modification of *Ludwig*. Applicants do not provide substantive argument as to why *Ludwig* could not properly modified; they merely cite case law with no suggestion of how the case law would be applied to the rejection. They assert that *Ludwig* does not teach or suggest all the Claim limitations, but fail to

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specify which are lacking. The Examiner assumes that Applicants refer to the newly claimed feature of an IP environment, which is addressed above.

At page 9, paragraphs 1-4, Applicants assert that hindsight was applied but provide no rationale for this assertion. They provide no argument why the Examiner's reason for modification of *Ludwig* is incorrect. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As to Applicants' argument at page 10 with respect to Claims 20-23, Applicants assert that suggestion or motivation must be found in the references, but ignore the knowledge of on of ordinary skill in the art of network collaboration as discussed above..

At page 10, second full paragraph to end of argument, Applicants rely on their claim of allowability of the base independent Claims for allowability of the discussed Claims. The arguments on base Claims was non persuasive as set forth above.

The rejections are maintained.


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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R Kyle whose telephone number is (703) 305-4458. The examiner can normally be reached on M-F 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for official communication and (703) 872-9327 for after final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
CRK

August 15, 2003

  
DR. GEOFFREY R. AKERS, P.E.  
PRIMARY EXAMINER